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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/688,045	10/17/2003	Huan-Just Lin	2003-0065/24061.508	9213
42717	7590	05/11/2006	EXAMINER	
HAYNES AND BOONE, LLP			KUNEMUND, ROBERT M	
901 MAIN STREET, SUITE 3100			ART UNIT	
DALLAS, TX 75202			PAPER NUMBER	

1722

DATE MAILED: 05/11/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No. 10/688,045	Applicant(s) LIN ET AL.	
	Examiner Robert M. Kunemund	Art Unit 1722	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 26 February 2006.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-40 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-40 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

Claims 1 to 5, 8 to 10, 15, 20 to 24 and 27 to 29 are rejected under 35 U.S.C. 103(a) as being unpatentable over Yang et al (6,451,647) in view of Ying et al (6,436,838).

The Yang et al reference teaches a method of etching a MOSFET device, note entire reference. On a substrate, a high dielectric layer is deposited by standard methods such as MOCVD, note col. 5. The dielectric can be Hf, Zr, Ta or Y compounds. Then a gate layer and gate electrodes are deposited on top of the high dielectric layer. The deposition is done so that there is exposed high dielectric layer, note col. 6. The structure is then subjected to a plasma etch. The plasma etches only

the high dielectric layer, note col. 6. The sole difference between the instant claims and the prior art claims is the plasma content. However, the Ying et al reference teaches the use of barium trichloride gases with other halogens to plasma etch dielectrics, note col. 3. It would have been obvious to one of ordinary skill in the art to modify the Yang et al process by the teachings of the Ying et al reference to use barium trichloride in the plasma in order to increase the selectivity of the etchant gases.

Claims 6, 7, 25 and 26 are rejected under 35 U.S.C. 103(a) as being unpatentable over Yang et al (6,451,647) in view of Ying et al (6,436,838).

The Ying et al and Yang et al references are relied on for the same reasons as stated supra, and differ from the instant claims in the layer treatment. However, in the absence of unexpected results, it would have been obvious to one of ordinary skill in the art to determine through routine experimentation the optimum, operable treatment of the dielectric layer in the Yang et al reference in order to create a uniform layer increasing the device quality.

Claims 11 to 14, 16 to 19 and 30 to 40 are rejected under 35 U.S.C. 103(a) as being unpatentable over Yang et al (6,451,647) in view of Ying et al (6,436,838).

The Ying et al and Yang et al references are relied on for the same reasons as stated supra, and differ from the instant claims in the plasma conditions. However, in the absence of unexpected results, it would have been obvious to one of ordinary skill in the art to determine through routine experimentation the optimum, operable plasma conditions in the Yang et al reference in order to selectively etch the high dielectric layer and not the gate.

*Response to Applicants' Arguments*

Applicant's arguments filed February 26, 2006 have been fully considered but they are not persuasive.

The terminal disclaimer has been approved by the office and the double patenting rejections have been overcome.

Applicants' argument concerning the hydrocarbon fluorine containing gas is noted. However, the Yang et al reference teaches the use of the claimed fluorine gases in etching high dielectrics, note col. 12. Thus, the prior art does teach the claimed process gases.

Applicants' argument concerning the combination of the references is noted. However, it is well settled that if two references teach the individual components that do the similar function, combining the two together would have been well within the level and skill of one of ordinary skill. Thus, it is obvious to one of ordinary skill in the art to combine the gases to etch as claimed. Also, in the etching art, using more than one gas at a time to etch is well known.

In response to applicant's argument that the examiner's conclusion of obviousness is based upon improper hindsight reasoning, it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a

reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971).

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).


A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Robert M. Kunemund whose telephone number is 571-272-1464. The examiner can normally be reached on 8 hours.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Yogendra Gupta can be reached on 571-272-1312. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 1722

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Robert M Kunemund  
Primary Examiner  
Art Unit 1722

RMK